

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL F. SCHULZE,
Plaintiff,

CASE NO. CV-F-05-0180 AWI LJO

SECOND INFORMATIONAL ORDER AND
SUMMARY JUDGMENT NOTICE

vs.

FEDERAL BUREAU OF
INVESTIGATION, et al.,

Defendants.

Plaintiff Michael F. Schulze ("plaintiff") proceeds in forma pauperis in this action in which defendants have recently filed an answer. Parties to this litigation shall take note of the following requirements:

1. Unless otherwise ordered, all motions to dismiss, motions for summary judgment, motions concerning discovery, motions pursuant to F.R.Civ.P. 7, 11, 12, 15, 41, 55, 56, 59 and 60, and motions pursuant to this Court's Local Rule 11-110 shall be

1 briefed pursuant to this Court's Local Rule 78-230(m). Failure to oppose such a
2 motion timely may be deemed a waiver of opposition to the motion. Opposition to
3 all other motions need be filed only as directed by the court.

- 4 2. At some point in the litigation, one or more defendants may seek summary
5 judgment/adjudication as to some or all of plaintiff's claims. Pursuant to *Klingele*
6 *v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988), plaintiff is advised of the following
7 requirements to oppose a motion for summary judgment/adjudication made by a
8 defendant pursuant to F.R.Civ.P. 56. Such a motion is a request for an order for
9 judgment in favor of defendant without trial. The defendant's motion will set forth
10 the facts that defendant contends are not reasonably subject to dispute and that entitle
11 defendant to judgment. To oppose the motion, plaintiff must show proof of his or her
12 claims. Plaintiff may do this in one or more of the following ways: (1) plaintiff may
13 rely on statements made under the penalty of perjury in the complaint if the
14 complaint shows that plaintiff has personal knowledge of the matters stated and
15 plaintiff calls to the court's attention those parts of the complaint upon which plaintiff
16 relies; (2) plaintiff may also serve and file one or more affidavits or declarations¹
17 setting forth the facts that plaintiff believes prove plaintiff's claims (the persons who
18 sign the affidavit or declaration must have personal knowledge of the facts stated);
19 (3) plaintiff may also rely upon written records but plaintiff must prove that the
20 records are what plaintiff claims they are²; and (4) plaintiff may also rely upon all or
21

22 ¹ An affidavit is a written declaration or statement of facts, made voluntarily, and confirmed by the oath
23 or affirmation of the party making it, taken before an officer having authority to administer such oath. An unsworn
24 declaration has the same effect as an affidavit, provided that it is dated and signed under penalty of perjury, as follows:
25 "I declare under penalty of perjury that the foregoing is true and correct." 28 U.S.C. § 1746. Affidavits and declarations
26 must be made on personal knowledge and must set forth facts as would be admissible in evidence. *See* F.R.Civ.P. 56(e).

² Sworn or certified copies of all papers referred to in an affidavit or declaration must be attached to the
affidavit or declaration and served on the opposing party. F.R.Civ.P. 56(e).

1 any part of the transcript of one or more depositions, answers to interrogatories, or
2 admissions obtained in this proceeding. Should plaintiff fail to contradict
3 defendant's motion with affidavits, declarations or other evidence, defendant's
4 evidence will be taken as truth, and final judgment may be entered without a full trial.
5 *See* F.R.Civ.P. 56(e).

6 3. If there is some good reason why such facts are not available to plaintiff when
7 required to oppose defendant's motion for summary judgment/adjudication, the Court
8 will consider a request to postpone considering defendant's motion. *See* F.R.Civ.P.
9 56(f). If plaintiff does not serve and file a request to postpone consideration of
10 defendant's motion or written opposition to the motion, the Court may consider the
11 failure to act as a waiver of opposition to defendant's motion. Plaintiff's waiver of
12 opposition to defendant's motion may result in the entry of summary judgment
13 against plaintiff.

14 4. A motion supported by affidavits or declarations that are unsigned will be stricken.

15 5. The failure of any party to comply with this order, the Federal Rules of Civil
16 Procedure, or the Local Rules of Court, may result in the imposition of sanctions
17 including, but not limited to, dismissal of the action or entry of default.

18 IT IS SO ORDERED.

19 **Dated: December 21, 2005**
66h44d

/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE